

Application No. : 10/789,815  
Amdt. Dated : September 13, 2005  
Reply To O.A. Of : June 14, 2005

### REMARKS

The Applicant thanks the Examiner for his careful and thoughtful examination of the present application. By way of summary, Claims 1-38 were pending in this application. In the present amendment, the Applicant has canceled Claim 3 without prejudice or disclaimer, amended Claims 25 and 27-30 to correct informalities unrelated to the patentability or scope of the claims, and amended Claim 1. Accordingly, Claims 1-2 and 4-38 remain pending for consideration.

#### Acknowledgement of Claim 38

Applicant notes that the Office Action Cover Sheet did not indicate acknowledgement of pending Claim 38 (see Disposition of Claims, Para. Nos. 4 and 6 referencing claims "1-37"). However, Applicant notes that Claim 38 was rejected in the Detailed Action section of the Office Action. Accordingly, Applicant assumes that Claim 38 was properly considered in the June 14, 2005 Office Action and the absence thereof from the Cover Sheet was merely a typographical error.

#### Rejection Of Claims 1-3, 9-14, 18-17, 29-34, and 37-38 Under 35 U.S.C. § 102

The Office Action rejected Claims 1-3, 9-14, 18-27, 29-34, and 37-38 under 35 U.S.C. § 102 as being anticipated by U.S. patent no. 6,560,029, issued to Dobbie et al. (the Dobbie patent). Applicant respectfully traverses this rejection because the Dobbie patent fails to identically teach every element of the claim. See M.P.E.P. § 2131 (stating that in order to anticipate a claim, a prior art reference must identically teach every element of the claim).

Amended independent Claim 1 recites, among other things,

1. A handheld night vision device . . . comprising:
  - a housing having optics to collect light into the housing;
  - an eyepiece comprising a flexible eye cup including a pliable member capable of substantially form fitting an eye socket of a user thereby being capable of substantially precluding illumination of a face of the user by the night vision device;
  - an imager . . . ; and
  - a digital display . . . .

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The Office Action alleges that the Dobbie patent discloses a digital display disposed within a housing, and discloses that the very same housing includes optics to collect light therein. In contrast, Applicant respectfully submits that the Dobbie patent expressly discloses a head-mounted display module mounted external to any housing having optics to collect light. See for example, FIGS. 1B and 3B of the Dobbie patent which show a video display 14 which is external to a video camera 12.

The Office Action also alleges that the Dobbie patent discloses an eyepiece comprising a flexible eyecup. In contrast, the Applicant submits that the Dobbie patent is silent with regard to an eyecup. Rather, the drawings of the Dobbie patent show a video display 14 shaped similar to a construction bucket incapable of preventing substantial illumination of the user's face. For example, column 6, lines 29 of the Dobbie patent teach a display module that has a prismatic eyepiece 64 (see FIG. 8) that "is placed in front of the user's eye, just beyond where a lens from a pair of glasses would be located." Further, the Dobbie patent does not teach a flexible eyepiece. Rather, the Dobbie patent teaches a prismatic eyepiece made from plastic or glass. See column 6, lines 53-55.

Based on the foregoing, Applicant submits that the Dobbie patent fails to identically teach every element of independent Claim 1. Accordingly, Applicant respectfully requests withdrawal of the rejection of Claim 1.

Similar to the foregoing, the Dobbie patent also fails to identically teach or suggest every element of independent Claims 14, 25, and 31, including but not limited to receiving image data into the housing, where the housing includes a display or screen. Based on the foregoing and additional features recited in each claim, Applicant respectfully requests that the rejection of Claims 14, 25, and 31 also be withdrawn.

Claims 2-13, 15-24, 26-30, and 32-38, which respectively depend from independent Claims 1, 14, 25, and 31, are believed to be patentable for the same reasons articulated above and because of the additional features recited therein. Therefore, Applicant respectfully requests that the rejections, whether under 35 U.S.C. § 102 or § 103, of Claims 2-13, 15-24, 26-30, and 32-38 be withdrawn.

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**Request For Telephone Interview**

In view of the forgoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain to be resolved, Applicant's undersigned attorney of record hereby formally requests a telephone interview with the Examiner. Applicant's attorney can be reached at (949) 721-2942 or at the number listed below.

In addition, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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By: Aaron D. Barker  
Aaron D. Barker  
Registration No. 51,432  
Attorney of Record  
(949) 760-0404

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